

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

April 12, 2010

The Honorable President and Members  
of the Baltimore City Council  
Attn: Karen Randle, Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: City Council Bill 10-0474 – Beverage Container Tax

Dear Mr. President and City Council Members:

You have asked the Law Department to review City Council Bill 10-0474 for form and legal sufficiency. The bill adds sections 20-1 through 20-13 to Article 28 of the City Code to impose a 4¢ tax per non-useable beverage container on every distributor who supplies a non-reusable beverage container to a dealer operating in Baltimore City. A distributor must pay the tax on a monthly basis and submit a monthly report on all non-reusable beverage containers supplied. Containers filled with certain beverages, such as dairy products or 10% natural fruit juices, or 2 liters or larger are exempt from the tax. Failure to pay the tax may result in assessment of interest and penalties, constitutes a lien on the property of any person liable for their payment, and is a misdemeanor.

The State of Maryland has granted the Mayor & City Council of Baltimore broad taxing powers. Article II, Section 40 of the Baltimore City Charter gives the City the power "to have and to exercise, within the limits of Baltimore City, in addition to any and all taxing powers heretofore granted by the General Assembly of the Maryland to the Mayor and City Council of Baltimore, the power to tax to the same extent as the State of Maryland has or could exercise said power within the limits of Baltimore City as a part of its general taxing power; and to provide by ordinance for the imposition, assessment, levy and collection of any tax or taxes authorized by this subsection; and from time to time to grant exemptions and to modify or repeal existing or future exemptions...." The Mayor and City Council has exercised this power by enacting numerous tax provisions. While local governments are generally prohibited from enacting sales tax measures, an excise tax is within the broad taxing powers of the City. § 11-102(a) of the Tax General Article.

As indicated, the City may not impose a sales tax, and a tax imposed only at time of sale would probably be considered a sales tax. *Montgomery County v. Maryland Soft Drink Association, Inc.*, 281 Md. 116 (1977) However, the City may, and previously did, impose an

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excise tax on each non-reusable beverage container (including alcoholic drinks) a distributor supplies to a dealer in Baltimore City. The Court of Appeals found that this type of tax – which is not dependent on sale -- is a permissible excise tax, not a sales tax. *Montgomery County v. Maryland Soft Drink Association, Inc.*, 281 Md. 116 (1977).

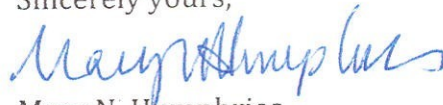
To clarify the bill, we suggest the following amendments:

1. In §20-4 (a) (1), insert “non-reusable” before the phrase “beverage containers” to be consistent with the defined terms in the bill.
2. In §20-4(a) (2), replace the word “product” which is not a defined term with the defined term “non-reusable beverage container.”

While these clarifying amendments are not required for us to approve the bill, we believe they will make the bill less subject to challenge.

The Law Department approves Bill 10-0474 for form and legal sufficiency.

Sincerely yours,



Mary N. Humphries  
Chief Solicitor

cc: Honorable Jack Young  
Angela Gibson, City Council Liaison  
George A. Nilson, City Solicitor  
Ashlea Brown, Assistant Solicitor  
Hilary Ruley, Assistant Solicitor  
Terese Brown, Assistant Solicitor